# Before the FEDERAL COMMUNICATIONS COMMISSION Washington, D.C. 20554

In the Matter of	)
	)
Expanding the Economic and Innovation	) Docket No. 12-268
Opportunities of Spectrum Through Incentive	)
Auctions	)
	)

## COMMENTS OF HARRIS CORPORATION, BROADCAST COMMUNICATIONS DIVISION

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#### **SUMMARY**

With its Notice of Proposed Rulemaking, the Federal Communications Commission has embarked on the path toward conducting a first-of-its-kind incentive auction to reallocate scarce spectrum resources from broadcast to mobile broadband use. As the world's leading supplier of broadcast transmission equipment, Harris Corporation's Broadcast Communications Division ("Harris Broadcast") recognizes the potential benefit that can come from a voluntary, marketbased transfer of underutilized spectrum. For the wireless telecommunications industry, the incentive auction presents a rare opportunity to acquire beachfront spectrum with excellent propagation characteristics that can be used to deliver mobile broadband services. For weak and financially challenged broadcasters, meanwhile, the incentive auction provides an avenue to receive compensation to exit the broadcast industry entirely or to at least relinquish some of their spectrum capacity. But there is a third set of players who are essential to the success of the incentive auction – broadcasters who remain committed to serving the public interest once the auction is complete. In many ways, these broadcasters and their viewers are the auction's innocent bystanders. Although many broadcasters have no interest in participating in the reverse auction, all face the prospect of relocation to new channels, accepting new interference from other repacked stations, or both. As the Commission proceeds down the path toward a broadcast incentive auction, it must keep the interests of these stations and their viewers in mind.

The success of the incentive auction should be measured not by the total amount of spectrum reallocated for mobile broadband use or the total amount of revenue generated for the Treasury, but by whether the resulting spectrum allocation provides an optimal distribution that serves all of the nation's needs. As the Commission and Congress repeatedly have recognized, a robust broadcast industry is an essential component of any efficient allocation of the nation's

spectrum. Over-the-air broadcasting provides Americans with access to critical news and information along with highly desired sports and entertainment programming. And broadcasters are committed to expanding the reach of these services through emerging technologies, such as Mobile DTV. An effective national spectrum policy must encourage broadcasters to continue expanding the ways they serve the public, not place obstacles in their way.

Protecting a vibrant broadcast industry requires ensuring that those stations remaining on the air after the incentive auction can continue to serve all of their existing viewers with minimal disruption. Although the Commission understandably will need to repack remaining broadcasters to maximize the amount of spectrum that it can reclaim, it must take great care not to harm those broadcasters in the process. This entails taking all reasonable efforts, as mandated in the Spectrum Act, to preserve *both* a station's coverage area and its population served. It also requires adopting flexible procedures, including a reasonable construction period and an accommodation for temporary facilities and channels, which will minimize or eliminate the time that stations will need to go off the air and thus reduce the disruption to the viewing public.

Protecting a vibrant broadcast industry also demands that the Commission ensure that no broadcaster has to come out of pocket for costs necessary to fulfill the agency's goal of reallocating broadcast spectrum for mobile broadband use. For many broadcasters, the cost of relocating to a new channel will be substantial with no corresponding benefit. There simply is no public policy justification for shouldering broadcasters with this burden. Instead, the FCC must ensure that the \$1.75 billion allocated by Congress is sufficient to cover all reasonable costs that broadcasters will incur. Further, the process for distributing these funds must be transparent and predictable, including a clear definition of what constitutes a reasonable relocation expense.

Finally, protecting a vibrant broadcast industry requires recognizing this opportunity not only to reallocate spectrum for non-broadcast use, but also to create new uses within the television bands that will provide for the most efficient use of broadcast spectrum. This is the time for the Commission to instill a forward-thinking vision for the lower VHF band that accounts for the realities of digital broadcasting.

Harris Broadcast believes that the broadcast incentive auction truly can strengthen the broadcast industry, but doing so will require a commitment by the FCC to the principles outlined herein.

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#### COMMENTS OF HARRIS CORPORATION, BROADCAST COMMUNICATIONS DIVISION

Harris Corporation's Broadcast Communications Division ("Harris Broadcast")<sup>1</sup> is the world's leading supplier of broadcast transmission equipment. Harris Broadcast is headquartered in Denver, Colorado, and maintains broadcast research centers across the United States and Canada. Harris Broadcast's Quincy, Illinois, transmission manufacturing facility is the largest such facility in the world. As the supplier of the majority of the digital television transmitters and encoders in the United States, Harris Broadcast has been at the forefront of the transition to digital television. Harris Broadcast is committed to facilitating technological advancement within the broadcast industry and focused on helping customers succeed in the world of digital media. Harris Broadcast is an active member of industry and standard setting organizations, including the Advanced Television Systems Committee ("ATSC") and the National Association of Broadcasters ("NAB").

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On December 6, 2012, Harris Corporation announced that it had entered into an agreement to sell the Broadcast Communications Division to The Gores Group. The transaction is expected to close in early calendar year 2013.

The Commission's Notice of Proposed Rulemaking ("NPRM")<sup>2</sup> asks how the FCC should implement the incentive auction authority granted to it in the Middle Class Tax Relief and Job Creation Act of 2012 (the "Spectrum Act")<sup>3</sup>. Harris Broadcast urges the Commission to take all necessary actions to protect the interests of television viewers in the proposed broadcast incentive auction and the subsequent repacking by upholding its commitment to strengthen the broadcast industry.

#### I. <u>INTRODUCTION</u>

The proposed first-of-its-kind incentive auction represents a unique opportunity for the Commission and the country. Never before has the federal government endeavored to allocate spectrum among various uses based on market dynamics rather than policy judgments. In implementing the incentive auction authority granted to it by Congress, however, the Commission must remember that a successful incentive auction is not measured by how much spectrum is reallocated for mobile broadband use or how much revenue is generated for the Treasury, but rather by effectuating an efficient reallocation of underutilized spectrum without upsetting existing, socially beneficial spectrum utilization. If the FCC can strike this balance, achieving what Chairman Genachowski has dubbed a "win-win-win," the incentive auction will widely be considered a success. But the incentive auction and the corresponding repacking are complex propositions, loaded with potential landmines that the agency must take great care to avoid.

In the Matter of Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, Notice of Proposed Rulemaking, 27 FCC Rcd. 12357 (2012) ("NPRM").

<sup>&</sup>lt;sup>3</sup> Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96 §§ 6401 *et seq.*, 125 Stat. 156 (2012).

While the Commission determines how best to reallocate part of the broadcast television spectrum, the broadcast industry continues to do what it does best: providing the news and emergency information that Americans need, the entertainment and sports programming that Americans desire, and the technological advancements, such as mobile DTV, that Americans are just starting to embrace. Broadcast television continues to have a uniting factor that no other technology can match, drawing tens of millions of Americans into a shared experience, be it the season premiere of Modern Family, the finale of American Idol, or the Super Bowl. And in times of crisis, when Americans need information that is fast, accurate, and reliable, broadcast television rises to the occasion with its unmatched one-to-many architecture.

Among the many challenges the Commission faces in designing the incentive auction is delivering the third "win" – strengthening the broadcast industry. Because the best offense is a good defense, the most important thing the FCC can do is protect from harm the majority of broadcasters who, when the dust settles, will continue to serve the public interest by providing free, over-the-air television. The agency should take all necessary precautions to minimize the disruption that the incentive auction process has on these broadcasters and their viewers. This starts with establishing realistic deadlines for a phased, post-auction relocation to new channel assignments. It also entails protecting stations' existing contours and populations served so a viewer who can receive a station's over-the-air signal today can continue to do so when the repacking is complete. Finally, it means the Commission should work to minimize the amount of time stations are unable to broadcast, including by providing temporary alternative channel assignments and the opportunity to operate a temporary side-mount antenna while modifying the station's top mounted facilities, to the extent these are needed.

Protecting television also requires that the FCC not stick broadcasters with the bill for a relocation they did not choose. The Commission must ensure that the \$1.75 billion relocation fund established by Congress is allocated in a manner that is fair, transparent, and covers all reasonable relocation costs.

While doing no harm should be the agency's top priority as to existing broadcasters, the incentive auction offers the Commission a unique opportunity to strengthen the broadcast industry as a whole by repurposing the lower VHF band. The agency can take advantage of the clearing of UHF and upper VHF spectrum through the incentive auction and repacking to reallocate stations currently broadcasting on low VHF channels because they have nowhere else to go. Then, with full power and Class A stations out of low VHF, the Commission can reallocate these channels for low power television and an expanded FM band, thereby strengthening broadcasters currently operating in the lower VHF band while also expanding opportunities in broadcasting.

As the Commission has recognized, the world is watching. By following the blueprint offered herein, the FCC's incentive auction can serve as a model for forward thinking spectrum allocation.

## II. THE COMMISSION SHOULD IMPLEMENT POST-AUCTION PROCEDURES THAT MINIMIZE THE DISRUPTION TO BROADCASTERS AND VIEWERS

In granting the FCC authority to conduct an incentive auction, Congress expressed great concern about the harm that spectrum reallocation could cause to existing broadcasters and their viewers. Congress clearly intended that for broadcasters who do not voluntarily elect to participate in the incentive auction, it should be business as usual. To that end, Congress imposed certain restrictions on the Commission's ability to repack the remaining broadcast stations so broadcasters are no worse off than they were on the day the legislation was adopted.

Congress has spoken, and now the FCC must act. In adopting its rules implementing the incentive auction, the agency should effectuate Congress' intent by taking all necessary steps to minimize disruption to broadcasters and broadcast viewers.

#### Α. The FCC's Repacking Model Should Ensure That Broadcasters Will Continue To Serve The Same Coverage Area And Population.

One of the central components of the Commission's plan to reallocate existing broadcast television spectrum for mobile wireless use is to repack all broadcast channels remaining after the incentive auction. As the NPRM acknowledges, because the repacking will require the assignment of many broadcast television stations to different channels, many stations will need to modify their technical facilities, which could affect their coverage area.<sup>4</sup> As a result, there are two potential scenarios under which viewers who currently receive an over-the-air signal from one or more broadcast stations would lose their ability to view those stations: (1) the different propagation characteristics associated with new frequencies may alter a station's contour; or (2) the realignment of nearby stations could cause additional interference, thereby disrupting the delivery of a station's signal even if that station's channel and facilities remain the same.<sup>5</sup>

Recognizing the potential disruption that repacking could cause, Congress mandated in the Spectrum Act that the FCC, in reassigning television channels, must "make all reasonable efforts to preserve, as of the date of the enactment of this Act, the coverage area and population served, of each broadcast television licensee." <sup>6</sup> The Commission should not take this restriction on its repacking authority lightly. In requiring "all reasonable efforts," Congress expressed its

See id.

Spectrum Act § 6403(b)(2).

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See NPRM ¶ 97.

unambiguous intent to ensure that broadcasters remaining on the air do not lose coverage due to repacking.<sup>7</sup>

Not only is protection of broadcasters' coverage area required by the law, it also is sound communications policy. Over-the-air broadcast viewership remains important to a great many households. Although the majority of households subscribe to some form of pay television service, the number of households who rely on free, over-the-air broadcasting is growing, with almost 21 million households representing nearly 54 million Americans relying exclusively on broadcast signals. Minority and underserved communities disproportionately rely upon over-the-air broadcasting to receive their news and emergency information, as well as entertainment programming. Further, even those viewers who receive broadcast stations through cable or other pay TV services could be affected by repacking. Many cable systems receive broadcast television signals by capturing the station's over-the-air signal at the system's head end. Additionally, if the geographic area served by a station changes as a result of the repacking, that station's carriage rights could change as well.

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See, e.g., 158 Cong. Rec. H914 (daily ed. February 17, 2012) (statement of Rep. Greg Walden that the bill will "protect our over-the-air Broadcasters" so that "viewers out there in America will still be able to see and watch their over-the-air public and private broadcasters"); 158 Cong. Rec. S889 (daily ed. February 17, 2012) (statement of Sen. Patrick Leahy expressing concern about the potential for additional interference as a result of repacking).

Press Release, National Association of Broadcasters, *Over-the-air TV Viewership Soars to 54 Million Americans* (June 18, 2012), *available at* http://www.nab.org/documents/newsroom/pressRelease.asp?id=2761.

See id. ("[S]ome minority groups are more dependent on broadcast reception than the general population, including 28% of Asian households (up from 25% in 2011) and 23% of African-American households (up from 17% in 2011). In addition, 26% of Latino homes (23% in 2011) are broadcast-only, a proportion that increases to 33% among homes in which Spanish is the language of choice, up from 27% in 2011. In all, minorities make up 44% of all broadcast-only homes, a four-point increase from 2011, when 40% of broadcast-only homes were minorities."); see also Digital Broadcast Television Transition Estimated Cost of Supporting Set-Top Boxes to Help Advance the DTV Transition, U.S. Government Accountability Office, GAO-05-258T, at 4 (Feb. 17, 2005) ("Additionally, non-white and Hispanic households are more likely to rely on over-the-air television than are white and non-Hispanic households."), available at http://www.gao.gov/new.items/d05258t.pdf.

As defined in the *NPRM*, a station's "coverage area" refers to the geographic area covered by the station's signal while the "population served" focuses on the actual viewers that a station's signal will reach without encountering interference. 10 Notably, Congress directed the Commission to make "all reasonable efforts" to protect *both* of these measures. Despite this clear direction from the legislature, however, the agency proposes several options that would result in various degrees of compromise to a station's coverage area and population served in the interest of clearing more spectrum for reallocation to mobile broadband use. Harris Broadcast strongly opposes any proposal that would have more than a *de minimis* effect on a station's coverage area or its population served. In determining which proposals to incorporate into the final auction rules, the Commission must remember that Congress did not call for it to make "those efforts that are reasonably convenient" or otherwise subordinate the protection of existing broadcasters to the other goals of the auction. Rather, Congress's choice of the phrase "all reasonable efforts" must be understood in the context of its desire to "make sure American viewers can continue to watch programming and news from the Nation's free, over-the-air broadcasters."11

The Commission proposes to define a full power station's protected coverage area as its "service area," as defined in OET Bulletin 69 and a Class A station's coverage area as its interference protected contour, as defined by the FCC's rules. <sup>12</sup> Harris Broadcast supports these definitions. However, the Commission's proposal to design antenna patterns that "might slightly extend a station's contour . . . in some directions *and decrease it in others*" is inconsistent with

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 $NPRM \P 99, 103.$ 

See 158 Cong. Rec. H914 (daily ed. February 17, 2012) (statement of Rep. Greg Walden).

<sup>&</sup>lt;sup>12</sup> NPRM¶ 99.

the mandate of the Spectrum Act. <sup>13</sup> While some loss of coverage may be unavoidable, the agency, in making "all reasonable efforts" to preserve a station's coverage area, should start from the premise that the entirety of a station's service area must be preserved and err on the side of increasing the station's coverage if it cannot replicate the station's existing contour. Harris Broadcast supports the Commission's proposal to allow stations to propose alterative transmission facilities to those specified by its replication software, providing broadcasters with additional flexibility while not affecting the agency's repacking model. <sup>14</sup>

Similarly, as to population served, the FCC must start with the premise that "all reasonable efforts" means maintaining service to all persons that a station currently serves. The *NPRM* offers three proposals for how to preserve population served in the repacking process. Under the first option, the FCC's repacking model would permit interference that would, in the aggregate, reduce population served by up to 0.5 percent. While this alone would be acceptable, option one would permit the location of persons affected by interference to change, meaning that while a station's total population loss cannot be reduced by more than 0.5 percent, a much larger number of existing viewers could experience interference as long as they are replaced by viewers who currently cannot receive an interference-free signal from the station. Substituting interference to hundreds or even thousands of viewers would be extremely disruptive to consumers and broadcasters alike, and cannot be reconciled with Congress' desire

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<sup>&</sup>lt;sup>13</sup> See id. ¶ 100 (emphasis added).

See id. ¶ 101.

<sup>&</sup>lt;sup>15</sup> See id. ¶ 103.

to "make sure American viewers can *continue* to watch programming and news from the Nation's free, over-the-air broadcasters." <sup>16</sup>

The second option would seek to preserve service to the same viewers, permitting no more than 0.5 percent additional interference to a station's specific population served as a result of each individual channel reassignment. Harris Broadcast believes this option is most consistent with the Spectrum Act and the Commission's goal of strengthening existing broadcasters. In adopting this option, however, there must be a limit on the aggregate interference caused to an individual station. Harris Broadcast supports that proposal by the National Association of Broadcasters to cap such aggregate interference at one percent (1%). This would provide the FCC with the flexibility to construct a repacking model that provides for a *de minimis* amount of new interference, while also limiting the disruption to consumers, who would lose access to important local programming, and to broadcasters, who would forfeit the goodwill that they have established with existing viewers.

The third option, permitting up to two percent (2%) "replacement interference" from any specific station that caused interference previously also has the potential to be highly disruptive in that it still would permit the shifting of interference to different viewers while, at the same time, allowing a large amount of aggregate interference if multiple stations are involved.<sup>17</sup> Moreover, as the Commission has recognized, the agency's repacking flexibility would greatly

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In asserting that "interpreting the statute as referring to total, rather than specific, population served would satisfy the statutory mandate," the Commission makes no effort to address Congress' intent in adopting the "all reasonable efforts" standard.  $See\ NPRM\ \P\ 105$ . The agency's statement that "viewers in the fringes of a station's coverage area often have access to the same programming from other stations" ignores the important local news, weather, sports, and information programming produced by many local stations and not replicated on neighboring stations.  $See\ id.\ n.165$ .

<sup>17</sup> *Id.* ¶¶ 107-08.

be reduced by this option. As a result, the benefit to the FCC's spectrum allocation goals would be less likely to justify the harm to existing broadcasters than with Option Two.

#### B. The Commission Must Establish Realistic Deadlines For Broadcasters To Transition To Their Post-Auction Facilities.

The *NPRM* seeks comment how to manage the transition from broadcasters' pre-auction to post-auction facilities. Although the Commission, on one hand, recognizes that "the transition will be complicated logistically," the *NPRM* appears to underestimate the difficulty of transitioning hundreds if not more than a thousand television stations to new channels. Because the FCC has yet to release its repacking model, it is difficult to estimate how far repacking will move the average channel assignment and thus how long each move will take. But, given the limited availability of resources for major facilities modifications and the complexity of moving channels – especially for stations forced to move between one of the three frequency bands used in most UHF transmitter technology – the agency must adopt a transition schedule that is both efficient and realistic.

#### 1. The Commission Should Adopt a Phased Post-Auction Transition Schedule.

The *NPRM* asks whether to establish a single deadline for completion of the transaction or a phased transition timetable, where the FCC would establish different transition deadlines by region. <sup>20</sup> Harris Broadcast believes the only way that the transition will be successful is for the Commission to conduct a phased transition – either starting with both coasts and moving toward

<sup>&</sup>lt;sup>18</sup> *Id.* ¶ 321.

As of December 30, 2012, the FCC reported that there were 1,028 UHF commercial TV stations, 288 UHF educational TV stations, and 393 Class A UHF stations. Even if a quarter of these stations were to relinquish their spectrum in the auction, a number that exceeds all reasonable estimates, that would leave almost 1300 stations for the agency to repack and who could be forced to transition to a post-auction channel.

<sup>&</sup>lt;sup>20</sup> *Id.* ¶¶ 322-23.

the middle of the country or starting with the middle of the country and moving to both coasts.

This approach will provide for the most efficient transition by allowing resources such as tower crews to focus on particular geographic areas (prioritized to minimize travel time and maximize suitable weather) rather than having to account for stations across the country all at once.

Transitioning broad geographic areas also will account for the differences between the digital transition and the post-auction transition that increase the complexity of the latter. As the agency recognized in the *NPRM*, in the digital transition, stations had three years to move from their analog facilities to their self-selected post-transition channels (and even then, the Commission frequently granted extensions to stations requiring additional time). Here, stations will have less time to move to a channel assigned by the FCC – perhaps without the benefit of an additional channel to use during the transition. To account for this added complexity, the agency should take all possible actions to make the process more efficient, including adopting a phased transition schedule.

### 2. The Commission Must Provide A Realistic Amount of Time for Stations to Modify Their Facilities.

The *NPRM* asks whether eighteen months would be a reasonable deadline for stations to transition to their post-auction channel allotment.<sup>23</sup> The answer to this question unequivocally is no – eighteen months is not a realistic amount of time for stations to complete their construction and transition to their post-auction channels. The Commission's proposal is based on the flawed premise that because stations were able to modify their facilities near the end of the digital transition to accommodate a channel change within twelve months of receiving a construction

<sup>&</sup>lt;sup>21</sup> See id. ¶ 313.

<sup>&</sup>lt;sup>22</sup> *Id*.

<sup>&</sup>lt;sup>23</sup> *Id.* ¶ 322.

permit, in this instance, stations will be able to change their channels within a similar timeframe.<sup>24</sup> There are two essential flaws in the FCC's logic. First, as the agency itself recognizes in the *NPRM*, many of the stations that changed channels at the end of the digital transition asked to remain on their constructed pre-transition channel, meaning that they did not need to make any further modifications, such as antenna or transmission line changes, to their facilities.<sup>25</sup> Second, even assuming that all 100 stations changing channels at the end of the digital transition required modifications to their facilities at the same time, this number still pales in comparison to the number of stations that may require facilities modifications to accommodate their post-auction channel assignments.

The broadcast engineering infrastructure simply is not equipped to simultaneously modify the facilities of hundreds of television stations. There are only fourteen tower crews in the United States who are qualified to work on broadcast television towers. Accounting for the fact that it will take an average of five weeks per station to change out antenna systems, these crews would only be able to replace the facilities of approximately 200 stations over eighteen months. And this assumes that all equipment is readily available – another challenge given that today there are only two major antenna manufacturers. The limited industry resources to effectuate the transition of so many stations at once would serve as an insurmountable barrier to the ability of many stations to complete their transition within eighteen months. Further, a

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See id.

<sup>&</sup>lt;sup>25</sup> See id. n.498.

Information from American Tower Corporation.

For most of the digital transition, there were three major antenna manufacturers. In December 2003, Electronics Research Inc. acquired the assets of Andrew Corp.'s broadcast antenna business. *See ERI Completes Purchase of Select Andrew Corp. Assets*, Broadcast Engineering (Dec. 16, 2003), *available at* http://broadcastengineering.com/news/broadcasting\_eri\_completes\_purchase.

realistic transition schedule must provide enough flexibility for unforeseen circumstances, such as bad weather and tower damage, which could cause further delays. In light of the foregoing, eighteen months is not a reasonable deadline for stations to complete construction of their post-transition facilities.

# C. The Post-Auction Transition Procedures Should Minimize the Amount of Time That Broadcasters Are Off the Air and, Therefore, Not Serving the Public.

As the Commission has recognized, unlike with the digital transition, where broadcasters had companion channels that allowed them to transition at their own pace, the interconnected nature of the post-auction allotments will require broadcasters to flash cut on a fixed schedule.<sup>28</sup> If a broadcaster is not prepared to flash cut to its new channel by the scheduled date, it will need to cease operating to avoid a daisy chain of stations not able to transition to their new channels. In the process, viewers throughout the relevant market will be denied the valuable programming that over-the-air broadcasters provide.<sup>29</sup> The FCC should seek to minimize this disruption to the broadcast infrastructure.

For many stations the issue is not time, but technology. Most equipment manufacturers divide their transmitter-related equipment into three band segments within the UHF band (the actual division of which varies by manufacturer). To move from a channel on one of the three UHF band segments to another, even stations with the most up-to-date technology face a substantial task.<sup>30</sup> A station with IOT technology will need to install new tube cavities and a

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See NPRM ¶ 313.

Viewers with antennas are not the only ones who will be affected if broadcasters need to go silent during the post-auction transition. Because many cable head ends receive broadcast signals over-the-air, subscribers to those cable systems also will be unable to receive the affected station's programming.

In this case, the extent of a station's channel relocation is less important than whether the relocation is from one UHF band segment to another. A move of a single channel could place a station into a new UHF band segment while a move of ten channels can still be within the same UHF band segment. Because the division of band

new solid-state driver module, while a station with an existing solid-state transmitter will need to install new power amplifier modules and RF combiners. As a result, it would be more cost-effective, more time-efficient, and less disruptive to viewers for these stations to replace, rather than modify, their transmitters.

Beyond the transmitter itself, stations may need to replace other channel-specific components, including the channel mask filter and likely the antenna. This will require first placing a temporary system on the tower, then removing the old system and installing and testing the new system, before finally removing the temporary system. In all, the process will involve an average of five weeks of on-site work by a qualified tower crew.

With this in mind, it is imperative that the Commission adopt a streamlined process for broadcasters to operate with temporary facilities while they complete construction. The *NPRM* includes two proposals, both of which should be adopted:

• First, broadcasters forced to modify their facilities to accommodate a new channel should be permitted to operate for a short period of time on a channel relinquished by a winning license termination bidder. The FCC need not provide a three year transition period, as it did in the digital transition. But to the extent possible, the agency should accommodate stations for a reasonable amount of time when they otherwise would need to go off the air to transition their facilities. This will cause the least disruption to viewers seeking to watch anything from a major sporting event to an episode of their favorite sitcom.

segments varies by manufacturer, it would be difficult for the Commission to account for this factor in its repacking model.

<sup>&</sup>lt;sup>31</sup> *See NPRM* ¶ 328.

• Second, stations should be permitted to operate a temporary facility side-mounted on a tower structure while making changes to their final top-mounted facilities.<sup>32</sup> This will provide an additional method by which stations can continue to serve their viewers for days, weeks, or even months while their existing facilities are modified.

To facilitate stations desiring to take advantage of these temporary facilities, the Commission should adopt a streamlined STA process. The STA application should be relatively simple, with the information required limited in proportion to the amount of time that stations will be operating on these facilities. Moreover, the Media Bureau staff should be prepared to quickly grant these applications so broadcasters will have certainty and can make the necessary plans to remain on the air.

Additionally, it would be a mistake for the FCC to adopt a short construction period with liberal "tolling" criteria. Presumably, under this approach a station that is unable to construct its post-transition facility before the expiration of its construction period would need to go off the air to make room for other stations affected by its pre-transition operations. As a result, both broadcasters and viewers would be disserved. Rather, the agency should adopt reasonable construction periods that will provide broadcasters with sufficient time to transition to their post-auction facilities, accounting for technical requirements, crew availability, and the other factors that go into a major facility modification.

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See id.

<sup>33</sup> See id. ¶ 327.

#### III. THE PROCESS FOR PAYMENT OF RELOCATION COSTS SHOULD BE TRANSPARENT AND ENSURE A MAXIMUM AND FAIR DISTRIBUTION OF **FUNDS**

For the spectrum incentive auction and the corresponding repacking to strengthen the broadcast industry rather than burden it, it is essential that broadcasters not have to incur the costs of a relocation they did not seek. Not only will the transition to new channels be complex, but in many cases it also will be costly. Broadcasters, who Congress recognized "just went through an expensive and difficult federally mandated transition to digital,"<sup>34</sup> face the prospects of more major infrastructure expenditures; only this time, the investment will not result in additional capacity or the potential to offer new services. Recognizing that broadcasters should not bear the costs of advancing unrelated spectrum policy goals, Congress established the TV Broadcaster Relocation Fund to "reimburse costs reasonably incurred" by broadcasters as a result of the repacking.<sup>35</sup>

Consistent with Congress' intent in establishing the relocation fund, it is imperative that the Commission administer the fund such that broadcasters receive reimbursement for all costs that they would not have incurred but for the repacking. To accomplish this goal, the FCC must incorporate broadcaster reimbursement into its incentive auction planning rather than viewing it as a standalone element to be addressed once the auction is complete. Moreover, the agency should adopt procedures that will allow for fair and prompt distribution of relocation funds to all broadcasters forced to move to a new channel to accommodate the reallocation of broadcast spectrum for mobile broadband use.

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<sup>158</sup> Cong. Rec. H914 (daily ed. February 17, 2012) (statement of Rep. Greg Walden).

<sup>35</sup> Spectrum Act § 6403(d).

### A. The FCC Should Ensure That Total Broadcaster Relocation Costs Do Not Exceed The \$1.75 Billion Allocated By Congress.

In establishing the TV Broadcaster Relocation Fund, Congress recognized that broadcasters who remain on the air, and thus stand to receive no benefit from the incentive auction, should not be forced to incur the costs of relocating their stations so additional spectrum can be auctioned to wireless providers. Accordingly, Congress directed in the Spectrum Act that the Commission "shall reimburse costs reasonably incurred" by a licensee reassigned from one UHF channel to another, from one high VHF channel to another, or from a high VHF channel to a UHF channel. <sup>36</sup> In choosing the phrase "shall reimburse," the legislature unambiguously indicated that it expected the FCC to reimburse broadcasters for all costs reasonably incurred. This is consistent with the legislative history, which indicates that Congress intended that the TV Relocation Fund would be sufficient to "cover relocation costs."

To effectuate the intent of Congress, the Commission must incorporate any limit on the number of stations that can be relocated for this amount into its repacking model. Without knowing in advance which stations will need to relocate and to what channels, it is impossible to determine the exact costs of relocation (as the cost to each station will depend on the extent of the move, the age of a station's existing equipment, the type of the existing equipment, and other factors). Nevertheless, prior to conducting the auction, the FCC should endeavor to develop an accurate estimate of the number of broadcasters it can relocate using the \$1.75 billion allocated for broadcaster relocation costs in the Spectrum Act. Armed with this information, the Commission must then incorporate a condition into its repacking model that the number of

<sup>36</sup> Spectrum Act § 6403(b)(4)(a)(1).

<sup>&</sup>lt;sup>37</sup> See H.R. Rep. No. 112-399, at 131 (2012) (Conf. Rep.).

The National Association of Broadcasters estimates that this amount will cover the expense of moving between 400 and 500 broadcasters.

stations changing channels cannot exceed the minimum number of stations for which \$1.75 billion will provide sufficient funding. To maximize the number of television stations that can be repacked, and thus the amount of spectrum that can be reallocated, the FCC also should account for the efficiency of each move in its repacking model.

As an alternative approach, the agency can eschew accounting for reimbursement costs in its repacking model and instead delay the closing of the forward auction until it can solicit estimates from broadcasters to determine whether the TV Broadcaster Relocation Fund can adequately cover all relocation costs. The benefit to this approach is that it would allow the Commission to determine the maximum amount of spectrum that it could reallocate for mobile broadband use without imposing any additional constraints. To the extent that this would require broadcaster relocation costs in excess of \$1.75 billion, the FCC could seek additional funding from Congress to allow it to achieve the most efficient reallocation. The disadvantage, however, is that it could delay the closing of the forward auction and force the agency to retroactively alter its repacking model to reduce the cost of relocation (should additional funds not be available).

### B. The FCC Should Establish a Procedure for Fair and Equal Reimbursement Based on Actual Costs.

However the Commission approaches the issue of determining which stations to relocate, it must establish a process that will provide for reimbursement to broadcasters in a fair and transparent manner. As a prerequisite to providing all broadcasters with an equal opportunity to receive their share of the relocation funds, the FCC should establish a policy of reimbursing broadcasters based on their *actual* relocation expenses. This does not mean that the agency must or even should wait until after broadcasters have completed construction to distribute funds. Rather, the Commission should establish a process that includes sufficient advanced funding based on reasonable estimates, followed by post-construction reconciliation.

- First, the agency should establish a six month window from the date that the new channel allocations are announced and final within which licensees of full power and Class A television stations forced to move to another channel may submit written estimates of their relocation costs, provided by qualified manufacturers and service providers. All broadcasters would have an equal opportunity to submit their estimates, and all timely submitted estimates would be treated equally (*i.e.*, funds would not be distributed on a first-come, first-served basis).
- Once the window closes, a third-party administrator would review each estimate to ensure that the proposed costs are permissible and justified, based on guidelines adopted by the Commission in advance of the auction.<sup>39</sup>
- The FCC then would analyze the total amount of the approved estimates against the total value of the relocation fund. If the total amount of the estimated relocation costs is less than \$1.75 billion, the Commission would reimburse broadcasters in full. If the amount is greater than \$1.75 billion, the Commission would need to seek additional funding from Congress or retroactively revise its repacking model. 40
- Broadcasters would then receive 80% of their estimated reimbursement amount in advance to cover any necessary down payments. Once construction is complete, broadcasters would submit their final invoices to the administrator and "true up" the final reimbursement amount, up to the total amount provided in their estimates.

See, infra, Section III.C. The cost of contracting with a third party administrator would be an administrative cost of the auction, to be recovered from the proceeds of the reverse auction and not from the TV Broadcaster Relocation Fund. See Spectrum Act § 6403(c)(2)(C).

While logistically it may be possible for the Commission to pro-rate the amounts that each broadcaster would receive based on the total value of the estimates provided, Harris Broadcast believes that the Spectrum Act prohibits this approach, requiring reimbursement for all reasonable expenses. *See, infra,* Section III.A.

The process described herein will provide transparency to potential recipients and ensure that all broadcasters have an equal opportunity to receive their fair share of relocation funds.

Meanwhile, by determining the expected costs in advance, the agency could account for any expected shortfall before broadcasters incur expenses that may not be subject to reimbursement.

### C. <u>The Commission Should Adopt a Detailed List of What Expenses Are</u> "Reasonably Incurred".

To provide certainty and transparency to the reimbursement process, the Commission should adopt, in advance of the auction, a list of those expenses that it will reimburse as "relocation expenses." In developing this list, the Commission must balance the need to reimburse broadcasters for all expenses reasonably related to their forced relocation against the need to spread the \$1.75 billion among hundreds, if not thousands, of broadcasters. Consistent with the procedure described above, the FCC should start with the premise that broadcasters should receive compensation for *all expenses* that are necessary to relocate to a new channel. By collecting estimates in advance, the agency would then be able to determine the aggregate amount of all reasonable expenses submitted and determine if the total amount in the fund is sufficient to provide full reimbursement, as mandated in the Spectrum Act.

Harris Broadcast believes the following items represent reasonable costs that broadcasters having to move to a new channel may incur, and thus, that should be subject to reimbursement:

- o Engineering study to determine requirements coverage;
- o Electrical service modifications:
- o Tower loading study;
- o Building permits;
- o Legal services for filing applications;
- o Cost of transmitter(s), channel filter, antenna, and transmission line;

- o Tower rigging and antenna installation;
- o Proof of performance testing;
- o Coverage verification;
- o Clean up and removal of old equipment;
- o Constructing a replacement tower (if necessary);
- o Channel combiners (if multiple stations are sharing an antenna);
- o Replacement of backup transmitters (if such transmitters are employed);
- Modifications to alternate backup sites (if a station currently has such sites in operation); and
- Costs of operating an interim channel (if needed), including the costs to install, rent, and remove transmitter equipment.

Reimbursing stations for these expenses will ensure, as Congress intended, that no broadcaster suffers financial harm for helping to fulfill the Commission's spectrum reallocation goals.

### D. The Statutory Completion Date Should Be Construed to Provide Sufficient Time For Broadcasters To Complete Their Relocation.

As the Commission recognizes in the *NPRM*, the Spectrum Act provides two constraints upon the timing of disbursements from the relocation fund: (1) the Commission may not borrow funds for relocation payments until after the reassignments and reallocations become effective; and (2) the Commission must make relocation payments within three years of the completion of the forward auction. Because this latter date – "[three] years after the completion of the forward auction" – establishes an outer limit on the date that reimbursements may be paid, it is important that the FCC not initiate this window too soon. The Commission should therefore, in

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<sup>&</sup>lt;sup>41</sup> NPRM ¶ 341 (citing Spectrum Act §§ 6403(b)(4)(D), (d)(3)(A), (f)(2).

an exercise of its discretion to carry out the incentive auction, declare the forward and reverse auctions complete and all reassignments and reallocations effective as of the date when it initiates the distribution of initial payments from the TV Broadcaster Relocation Fund.

This interpretation of the three year requirement is consistent with Congressional intent. Congress added the three year deadline to the Spectrum Act not to penalize broadcasters or to reduce the likelihood that they would be compensated, but to ensure that broadcasters received their payments in a timely manner. Accordingly, it would contravene the intent of Congress to implement this section in a way that would limit the ability of broadcasters to receive reimbursement for their relocation costs.

#### ANY ADDITIONAL INTERFERENCE TO EXISTING BROADCASTERS MUST IV. **BE VOLUNTARY**

Harris Broadcast supports efforts by the Commission to provide broadcasters with an array of options for reverse auction participation as long as such options are consistent with the Spectrum Act and the agency's commitment to preserving a robust broadcasting industry. The Spectrum Act provides three options for broadcasters desiring to participate in the reverse auction: (1) relinquish their spectrum rights and cease broadcasting; (2) relinquish their spectrum rights and "channel share" with another station; or (3) exchange their UHF channel allotment for a VHF channel. 42 In the NPRM, the Commission asks whether to offer additional bidding options, including permitting UHF or High VHF stations to voluntarily move to low VHF channels and allowing UHF channels to submit bids to accept additional interference from other broadcast stations or wireless broadband providers. 43 Harris Broadcast supports allowing

Spectrum Act § 6403(a)(2).

*NPRM* ¶¶ 85-77.

stations to *voluntarily* accept new interference, but opposes any efforts to relocate full power and Class A television stations to low VHF.

#### 1. Stations Should Have The Option to Voluntarily Accept Additional Interference In Exchange for a Share of the Auction Proceeds.

Permitting stations to *voluntarily* accept additional interference in exchange for a share of the proceeds from the forward auction is consistent with the Commission's goal of strengthening the broadcast industry. For a broadcaster that desires to remain on the air, accepting additional interference provides another mechanism by which it may choose to participate in the reverse auction. This option may be particularly attractive to stations struggling financially, including those owned by minorities or serving unserved or underserved populations, who could use the auction proceeds to better serve their audiences. Any option to accept additional interference must, however, be entirely voluntary. Forcing stations to accept additional interference would be inconsistent with the Spectrum Act and contrary to the agency's commitment to strengthen the broadcast industry. Additionally, the FCC must ensure that stations electing to accept additional interference do not experience any more interference than that which they agreed to accept. To the extent that the agency cannot guarantee the exact amount of interference received, it must disclose in advance the possible range of interference and design the repacking model to err on the side of creating less interference, not more.

## 2. Full Power and Class A Stations Should Not Have the Option of Relocating to the Low VHF Band.

The low VHF band (channels 2-4 and 5-6) continues to present a spectrum allocation challenge for the Commission. In the analog days, low VHF was considered beachfront property for television stations, generally occupied by the some of the oldest and strongest stations in the

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See, supra, Section II.A.

market. However, with the digital transition, low VHF has become a wasteland for television, "subject to a number of technical penalties, including higher ambient noise levels due to leaky power lines, vehicle ignition systems, and other impulse noise sources and interference to and from FM radio service." Any option to relocate television stations to the lower VHF band will only serve to exacerbate the problem that low VHF has become. Rather, as described in the following section, the Commission should seize this opportunity to reallocate the lower VHF band for uses more appropriate in the digital era.

### V. THE FCC SHOULD PROVIDE THE MOST EFFICIENT ALLOCATION OF SPECTRUM IN THE EXISTING TV BANDS

A central premise behind the proposed incentive auction is to provide the most efficient allocation of scarce spectrum resources. This principle should guide the Commission as it determines how best to utilize the existing television band. For the 600 MHz band plan, this means adopting a plan that would require the smallest total guard bands. Additionally, the agency should apply this principle to adopting an innovative approach to repurpose the lower VHF band.

#### A. The Commission Should Restructure the 600 MHz Band Plan to Maximize Efficiency While Minimizing Interference.

The National Broadband Plan, which inspired the Spectrum Act and serves as the foundation for the FCC's current spectrum allocation policy, originally called for the reallocation of 120 MHz of broadcast spectrum nationwide for mobile broadband use. 46 Revised assessments of the wireless industry's short term spectrum needs combined with the reality that it will be difficult to reclaim 120 MHz appear to have caused the Commission to recalibrate its

See In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service, Sixth Report and Order, 12 FCC Rcd. 14588, 14627 (1997).

See Federal Communications Commission, Connecting America: The National Broadband Plan ("National Broadband Plan") 77 (2011).

expectations. Instead, the agency has proposed a non-uniform 600 MHz band that would intersperse wireless and broadcast frequencies, thereby requiring additional guard bands while also increasing the prospect of interference between co-channel broadcast and wireless operations. The Commission must revisit this plan.

#### 1. The 600 MHz Wireless Band Should Be Continuous and Uniform.

Rather than adopt a fixed nationwide plan for the 600 MHz band, the *NPRM* proposes to maintain flexibility by providing for a uniform amount of nationwide downlink spectrum combined with varying amounts of uplink spectrum in each service area, based on availability. <sup>47</sup> As proposed, the uplink spectrum would start upper end of the band and extend downward on a variable basis, while the downlink spectrum would start at channel 37, with television in between. By splitting the wireless allocation into two segments, however, the Commission's proposal doubles the amount of guard band required. This approach is inconsistent with the Spectrum Act, which proscribes that "guard bands shall be no larger than is technically reasonable to prevent harmful interference between licensed services outside the guard bands." <sup>48</sup> The agency can minimize the amount of spectrum that must be allocated to guard bands by redesigning the 600 MHz band plan so all wireless spectrum is contiguous, beginning from the top of the current TV spectrum and working down.

The Commission must also abandon its proposal for a variable band plan. As proposed, the agency would account "for different levels of clearing in different geographic areas" by auctioning different amounts of uplink spectrum in different markets.<sup>49</sup> This could result in the

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<sup>&</sup>lt;sup>47</sup> NPRM ¶¶ 131-135.

<sup>48</sup> Spectrum Act § 6407(b).

<sup>&</sup>lt;sup>49</sup> *NPRM* ¶ 136.

FCC repurposing certain broadcast frequencies for mobile broadband use in one market while the same frequencies would remain dedicated to broadcast use in a neighboring market, increasing the likelihood of interference between co-channel wireless and broadcast operations. This interference can only truly be avoided by adopting a uniform 600 MHz band plan in all markets. If the Commission must account for certain markets where not enough spectrum is reclaimed to meet the nationwide standard, it should ensure sufficient separation between markets to allow for mitigation of interference.

#### 2. The 600 MHz Guard Bands Should Not Come From the Broadcast Allocation.

The Commission should take whatever spectrum ultimately is required for the guard band between broadcast and wireless frequencies from the wireless, not the broadcast allocation. While the exact size of the guard band remains in dispute, it is widely accepted that the 600 MHz band plan will need to provide some separation between the new wireless allocations and the repacked broadcast allocations to prevent interference between the two. The NPRM is silent, however, on the source of this guard band spectrum. Harris Broadcast encourages the FCC to take any required guard band spectrum from the spectrum reclaimed for mobile broadband use. For example, if the agency were to fulfill its original goal of clearing 120 MHz of broadcast spectrum nationwide, that would correspond to up to 20 stations in each market agreeing to relinquish their 6 MHz of spectrum. If the Commission were to determine that 6 MHz is the appropriate guard band size, it should not attempt to reclaim 21 broadcasters, but rather reduce the amount of spectrum available for wireless use by the size of the guard band. This approach

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See NPRM ¶ 158 (seeking "comment on the appropriate guard band size to prevent harmful interference to the 600 MHz mobile broadband and DTV services").

will ensure that the incentive auction does not result in any more disruption for broadcast viewers than necessary.

#### 3. The 700 MHz Antenna Height Restrictions and Power Limits Should Apply to the 600 MHz Band.

In adopting rules for the 600 MHz band, the Commission should adopt its proposal to apply power limits and antenna heights no greater than the 700 MHz band.<sup>51</sup> These rules would allow wireless carriers operating in the 600 MHz band to obtain the same operational benefits as operators in the 700 MHz band without causing any additional interference.

## B. The Commission Should Seize This Opportunity to Solve The Problem of Low VHF

As noted above, following the digital transition, the lower VHF band has become a wasteland for television. Nevertheless, as of December 30, 2012, 49 full power television stations and 17 Class A stations remain licensed to low VHF channels.<sup>52</sup> Many of these stations have had to dramatically increase their effective radiated power to even come close to replicating their analog service contours. In addition, low VHF has become a refuge for low power television stations, 371 of which are licensed to operate on a channel in the lower VHF band.<sup>53</sup>

The post-auction reallocation process presents a unique opportunity for the FCC to revisit the most efficient use of spectrum in the low VHF band, offering a win-win to broadcasters currently occupying the band and to potential new users of this spectrum. As a starting point, the FCC should commit to relocating all full power and Class A stations currently operating in the lower VHF band to an upper VHF channel. These stations should have a second priority for

<sup>&</sup>lt;sup>51</sup> See NPRM ¶¶ 192-195.

See Federal Communications Commission, *Broadcast Station Totals As of December 30*, 2012 (rel. Jan. 11, 2013).

<sup>53</sup> See id.

upper VHF allocations after broadcasters electing to exchange a UHF channel for a VHF channel (of which Harris Broadcast expects there will be but a few). For broadcasters currently assigned to a lower VHF channel, the improved propagation characteristics of the upper VHF spectrum will enhance their ability to deliver a digital, over-the-air signal to viewers, thereby fulfilling the agency's promise to strengthen the broadcast industry while also serving the public interest. As with stations facing repacking, the Commission should be cognizant of the potential expense these low VHF stations will face to modify their facilities for a new channel allocation (shortly after incurring expenses related to the digital transition) and should endeavor to allocate surplus funds generated by the incentive auction to reimburse those costs.<sup>54</sup>

Lower VHF spectrum reclaimed from broadcasters can be bifurcated into two parts based on the break between channels 2-4 ("lower VHF A") and channels 5-6 ("lower VHF B"). Harris Broadcast proposes allocating lower VHF A for low power television, including the 371 low power stations currently operating in the VHF bands and any UHF low power stations displaced in the repacking. By providing a designated spectrum band for low power operations, the Commission can preserve the benefits of low power television. 55 Under this reallocation of the VHF bands, lower VHF A will be separated from full power television operations, obviating the receiver de-sensing that low power stations face when operating in close proximity to a full power station. The result will be improved coverage for many low power television stations despite the poorer propagation characteristics of low VHF.

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Any funds allocated to reimburse stations transitioning from lower VHF to upper VHF should not come from the \$1.75 billion TV Broadcaster Relocation Fund, which by statute may only reimburse stations that currently occupy UHF or high VHF channels. *See* Spectrum Act § 6403(b)(4).

As the FCC recognized in the *NPRM*, despite the fact that "[I]ow power television stations are a source of diverse and local television programming . . . [o]nly a limited number of available channels may exist following the repacking process, limiting the relocation options available to displaced low power television and translator stations." *See NPRM* ¶ 358.

Lower VHF B, meanwhile, can be designated as an extended FM band, to be allocated for a combination of: (1) AM stations (including daytime-only stations desiring to expand their service, such as by using an FM repeater); (2) community FM; and/or (3) all-digital FM. <sup>56</sup> The Commission previously has indicated that reallocating TV channels 5 and 6 for FM broadcasting "could yield tremendous opportunities for new entrants." Expanding opportunities for community broadcasters would advance the goals of the Local Community Radio Act of 2010 – particularly in markets where existing FM spectrum is unavailable. <sup>58</sup> But Harris Broadcast believes the potential benefit also extends to incumbent broadcasters, particularly AM stations that desire improved coverage and FM stations interested in all-digital operations.

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Harris Broadcast's proposal for the Lower VHF B band is similar to the proposal previously submitted by the Broadcast Maximization Committee for channels 5 and 6. *See* Comments of Broadcast Maximization Committee, *Promotion Diversification of Ownership in the Broadcast Services*, MB Docket 07-294 (filed July 30, 2008).

See Promoting Diversification of Ownership in the Broadcasting Services, Report and Order and Third Further Notice of Proposed Rulemaking, 23 FCC Rcd. 5922 ¶ 100 (2008).

See generally Creation of a Low Power Radio Service, Fourth Report and Order and Third Order on Reconsideration, 27 FCC Rcd. 3364 (2012) (recognizing the LCRA's goal of preserving low power FM licensing opportunities).

#### VI. <u>CONCLUSION</u>

The *NPRM* represents a first step in the broadcast incentive auction process, but many complex issues remain that could have a substantial effect on the success of the auction and the corresponding repacking. Harris Broadcast appreciates the opportunity to submit these comments and looks forward to contributing to the ongoing dialogue about how the incentive auctions can strengthen and protect the broadcast industry.

Respectfully submitted,

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